

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**ANTONIO JEROME COLBERT,**

**Defendant.**

**Case No. 24-CR-337-JFH**

**OPINION AND ORDER**

Before the Court is a Motion to Determine Indian Country as a Matter of Law (“Motion”) filed by Plaintiff United States of America (the “Government”). Dkt. No. 35. The Government asks the Court to determine, as a matter of law, “land within the vicinity of 3700 South Mingo Road, Tulsa, Oklahoma” is within the boundaries of the Muscogee (Creek) Nation. Dkt. No. 35. The Defendant ostensibly opposes the Government’s Motion, but has filed no response to the Government’s Motion. For the reasons set forth below, the Motion is granted.

A “district court can find, as a matter of law, a geographic area or particular location is Indian Country, and then instruct the jury to determine factually whether the offense occurred there.” *United States v. Roberts*, 185 F.3d 1125, 1139-40 (10th Cir. 1999). The party seeking to invoke the jurisdiction of a federal court must demonstrate by a preponderance of the evidence that the case is within the Court's jurisdiction. *United States v. Bustillos*, 31 F.3d 931, 933 (10th Cir. 1994).

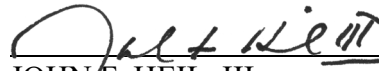
The Tenth Circuit was clear in *Roberts* that, “[a]s a general matter, the trial court decides the jurisdictional status of a particular property or area and then leaves to the jury the factual determination of whether the alleged crime occurred at the site.” 185 F.3d at 1139. “[A] trial court [] acts appropriately when it makes the jurisdictional ruling a particular tract of land or geographic

area is Indian Country, and then instructs the jury to determine whether the alleged offense occurred there.” *Id.*

Here the Government submits for the Court’s review a map of the Muscogee (Creek) Nation, showing that the area of 3700 South Mingo Road, Tulsa, Oklahoma is within the Nation’s boundaries. Dkt. No. 35-1. The Court finds this sufficient to demonstrate by a preponderance of the evidence that the location of the charged events is within Indian country. A jury, however, will determine the factual question of whether anything of a criminal nature occurred at the 3700 South Mingo Road, Tulsa, Oklahoma address.

IT IS THEREFORE ORDERED that the Motion to Determine Indian Country as a Matter of Law filed at Dkt. No. 35 is GRANTED.

Dated this 11th day of December 2024.

  
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JOHN F. HEIL, III  
UNITED STATES DISTRICT JUDGE